

## Wage and Hour Division, Labor

## § 783.40

of the vessel while in port, are employed as seamen within the meaning of the exemptions. The same may be true of licensed relief engineers employed under the same circumstances whose duty it is to maintain the ship's auxiliary machinery in operation and repair (see *Pratt v. Alaska Packers Asso.* (N.D. Calif.) 9 WH Cases 61).

### § 783.36 Barge tenders.

Barge tenders on non-selfpropelled barges who perform the normal duties of their occupation, such as attending to the lines and anchors, putting out running and mooring lights, pumping out bilge water, and other similar activities necessary and usual to the navigation of barges, are considered to be employed as "seamen" for the purposes of the Act unless they do a substantial amount of "non-seaman's" work (*Gale v. Union Bag & Paper Corp.*, 116 F. (2d) 27 (C.A. 5, 1940), cert. den. 313 U.S. 559 (1941)). However, there are employees who, while employed on vessels such as barges and lighters, are primarily or substantially engaged in performing duties such as loading and unloading or custodial service which do not constitute service performed primarily as an aid in the operation of these vessels as a means of transportation and consequently are not employed as "seamen" (*McCarthy v. Wright & Cobb Lighterage Co.*, 163 F. (2d) 92; *Anderson v. Manhattan Lighterage Corp.*, 148 F. (2d) 971, certiorari denied 326 U.S. 722; *Woods Lumber Co. v. Tobin*, 20 Labor Cases 66, 640 (W.D. Tenn, 1951), aff'd, 199 F. (2d) 455). Whether an employee is on board a vessel primarily to perform maritime services as a seaman or loading and unloading services typical of such shore-bases personnel as longshoremen is a question of fact and can be determined only after reviewing all the facts in the particular case.

### § 783.37 Enforcement policy for non-seaman's work.

In the enforcement of the Act, an employee will be regarded as "employed as a seaman" if his work as a whole meets the test stated in § 783.31, even though during the workweek he performs some work of a nature other than that which characterizes the service of a seaman, if such nonseaman's

work is not substantial in amount. For enforcement purposes, the Administrator's position is that such differing work is "substantial" if it occupies more than 20 percent of the time worked by the employee during the workweek.

### WHAT IS AN "AMERICAN VESSEL"

### § 783.38 Statutory definition of "American vessel".

The provisions of section 6(b)(2) prescribe special methods for computing minimum wages and hours worked under the Act which are applicable only to seamen who are employed on American vessels. An "American vessel", which would appear to signify a vessel of the United States as distinguished from a foreign vessel, "includes", under the terms of the definition in section 3(p) of the Act, "any vessel which is documented or numbered under the laws of the United States." The Department of the Treasury, Bureau of Customs and the United States Coast Guard, respectively, are responsible for documentation and numbering of vessels.

### § 783.39 "Vessel" includes all means of water transportation.

Since the Act does not define "vessel" it is appropriate to apply the definition of "vessel" as set forth in the United States Code (1 U.S.C. 3). The Code defines "vessel" as including "every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water". But the Federal Boating Act of 1958, (under which the U.S. Coast Guard is responsible for numbering vessels) and the Documentation Regulations administered by the Bureau of Customs, utilize this basic definition, with the addition of specific exclusions for "seaplanes" and "aircraft" (46 U.S.C. 527; 19 CFR 3.1(a)).

### § 783.40 "Documented" vessel.

A vessel "documented \* \* \* under the laws of the United States" is typically a vessel which has been registered, enrolled and licensed, or licensed by the Bureau of Customs under the laws of the United States (46 U.S.C. 11, 193, 251-

#### § 783.41

252, 258, 840). Although Bureau of Customs regulations provide for three types of documentations, distinctions between the categories of vessels subject to them are immaterial for the purposes of the Fair Labor Standards Act, since a vessel with any of the three kinds of documentation is an "American vessel" within the section 3(p) definition. Generally, any vessel of five net tons or more which is owned by a citizen of the United States is "entitled to" documentation. Complete information on the documentation requirements may be found in 19 CFR part 3.

#### § 783.41 "Numbered" vessel.

A vessel "numbered under the laws of the United States" means a vessel numbered pursuant to the provisions of Federal law, including vessels numbered under any State numbering system approved by the Secretary of the Department under which the U.S. Coast Guard is operating, in accordance with section 2(c) of the Federal Boating Act of 1958 (46 U.S.C. 527-527h). Generally, any vessel, which is not required to have and does not have, a valid marine document issued by the Bureau of Customs and is propelled by machinery of more than 10 horsepower, whether or not such machinery is the principal source of propulsion, is required to be numbered in conformity with the Federal Boating Act of 1958 if it uses the navigable waters of the United States, its Territories, or the District of Columbia, or is owned in a State and uses the high seas (46 U.S.C. 527(a)). The requirements and procedures of this Act are explained in detail in 46 CFR part 170.

#### § 783.42 Vessels neither "documented" nor "numbered".

An "American vessel" on which employment as a seaman is subject to the minimum wage under the provisions of section 6(b)(2) and section 13(a)(14) is not limited by the language of the Act to those vessels which are "documented" or "numbered" as described above in §§ 783.40 and 783.41. Since the term "American vessel" has traditionally been applied to regularly documented vessels (see *U.S. v. Rogers*, 27 Fed. Cas. 890; *Badger v. Entierrez*, 111

#### 29 CFR Ch. V (7-1-06 Edition)

U.S. 734; 18 Op. A.G. 234 (1885); 48 Am. Jur. 40), the inclusion of numbered vessels in the statutory definition of "American vessel" would indicate that the work "includes" is used in the sense of "embracing", as an enlargement and not as a word of limitation. The term may therefore apply to other vessels that do not fall within the illustrations given. For example, neither the documenting laws nor the numbering laws apply to vessels plying the purely internal waters of a State which do not join up with navigable waters touching on another State (19 CFR 3.5(a)(4); 33 CFR 2.10-5), but, nevertheless, the Fair Labor Standards Act does apply in those areas and it clearly would not comport with the remedial purpose of the Act to exclude from its minimum wage provisions seamen engaged in commerce or in the production of goods for commerce in those areas though the vessels are not documented or numbered. On the contrary, the legislative history shows the affirmative purpose to improve, though to a limited extent, the status of seamen (Sen. Rep. No. 145, 87th Cong., 1st sess., p. 32, 50).

#### COMPUTATION OF WAGES AND HOURS

#### § 783.43 Computation of seaman's minimum wage.

Section 6(b) requires, under paragraph (2) of the subsection, that an employee employed as a seaman on an American vessel be paid wages at not less than the rate which will provide to the employee, for the period covered by the wage payment, wages which are equal to compensation for all hours on duty in such period at the hourly rate prescribed for employees newly covered by the Act's minimum wage requirements by reason of the 1961 Amendments (see §§ 783.23 and 783.26). Although the Act takes the workweek as the unit of time to be used in determining compliance with the minimum wage of overtime requirements and in applying the exemptions, Congress, in recognition of the unique working conditions of seamen and of the customs in the industry, made this special provision. Under section 6(b)(2) periods other than a workweek may be used, in accordance with established customs in